

REMARKS

Upon careful and complete consideration of the Office Action dated May 12, 2008, applicant has amended the claims which, when considered in conjunction with the comments herein below, are deemed to place the present application into condition for allowance. Favorable reconsideration of this application, as amended, is respectfully solicited.

The Office Action rejected claims 42-44 and 46-57 under 35 U.S.C. §102(b) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as allegedly being obvious over EP 0447359 (hereinafter referred to as "Wong et al."), JP 7067536 and U.S. Patent No. 5,525,360 (hereinafter referred to as "Yatka et al."). The Office Action cited Wong et al. for teaching a synergistic sweetening composition comprising polydextrose, monosaccharides, and/or disaccharides; JP 7067536 for teaching the combination of polydextrose and sugar; and Yatka et al. for teaching a composition comprising polydextrose and additional sugar compounds including sucrose and maltose. In making its rejections, the Office Action further alleged that "[s]ynergism would be inherent to that of Wong et al, JP 7067536 and Yatka et al as the same components are used" and that "the concept of synergism in the sweetener art is well-known and expected."

In discussing Applicant's previously filed arguments, the Examiner noted that the Applicant did not exclude additional components. It is respectfully pointed out that the main claim has now been amended and is directed to a method for enhancing the sweetness of an edible product in the absence of an intense sweetener, comprising including in an edible product sweetened with a sweet tasting sugar compound polydextrose selected from purified and hydrogenated polydextrose having a pH of 3.5 to 6.5 and an acidity of 0.0003 meq/g or less, in an amount sufficient for synergistically enhancing the sweetness of said sugar compound, which is selected from the group consisting of sucrose, fructose, glucose, lactose, maltose, maltulose, isomaltulose, galactose and mixtures or syrups thereof.

In addition to the method for enhancing the sweetness of an edible product being amended to exclude the addition of any intense sweeteners, it is further noted that the

present invention was also previously limited by a definition of the pH and acidity of the polydextrose to clearly indicate that the polydextrose used in the present invention is the new type of purified and/or hydrogenated polydextrose which has a nice and clean taste and a very low acidity (0.003 meq/g or less). It is respectfully submitted that most of the polydextrose products used in the cited references, which date from the early 1990's were of the old type of polydextrose which was rather acid (i.e. had a pH of about 3 or less and a bitter taste). The new purified and/or hydrogenated polydextrose (Litesse II and Litesse Ultra – see pages 6-7 of the subject specification) has a pH above 3.5 and an acidity less than 0.003 meq/g.

As was argued previously, Wong et al. teach a synergistic combination between the old type of improved polydextrose **and a very specific artificial sweetener, i.e. 1-chloro-1'-deoxysucrose**, which is a synthetic compound closely related to the well-known intense sweetener sucralose. Sucralose has an inherent sweetness, which is about 600 times as high as that of sucrose.

Wong et al. note on page 3, lines 35 to 36, that each intense sweetener is chemically distinct and that each sweetener presents a different challenge in respect to its use. There is no suggestion in Wong et al. that polydextrose has any effect on the sweetness of sucrose, nor on the sweetness of any other non-intense sweeteners. To the contrary, Wong et al. note on page 2, lines 42 to 43, that because polydextrose is not sweet, **intense sweeteners must be used with polydextrose**. The fact that polydextrose has been found to synergistically increase the sweetness of one specific halogenated derivative of sucrose with an intense sweetness of its own in no way teaches or makes it obvious or even likely that polydextrose has any such effect on the non-halogenated mono- and disaccharides of the present invention. Now that the method of the present invention as claimed clearly excludes any intense sweeteners from being added to the sweetening composition, the present invention is distinguished from that of the prior art.

Said in a slightly different manner, it should be realized that in accordance with the teachings of Wong et al., the person skilled in the art finds that the sweetness of one very specific compound, i.e. 1-chloro-1'-deoxysucrose, is affected by polydextrose. It is respectfully submitted that the skilled artisan could not in any clear and logical manner realize that polydextrose has a sweetness-enhancing effect on other sugar compounds. In

fact, based on Wong et al., the opposite is true. By picking out one so specific and synthetic sugar as 1-chloro-1'-deoxysucrose, Wong et al. suggests that the synergistic effect is a specific property existing for the combination of this compound with polydextrose and that it is surprising in its own context. Nowhere in Wong et al. is it taught or even suggested of any likelihood that the same effect would be true for other compounds and other combinations.

Wong et al. suggest on page 9, lines 38 to 51, that bulking agents such as sucrose, fructose, and glucose may be added into the chewing gum composition sweetened with 1-chloro-1'-deoxysucrose. However, Wong et al. do not teach or even suggest that the polydextrose has a synergistic effect on the sweetness of the sugar bulking agent nor would the skilled person based on Wong et al. have used polydextrose for increasing the sweetness of the sugar bulking agent. The teaching of Wong et al. is clearly to use an intense sweetener to provide the sweetness that is needed. The present invention excludes the use of such an intense sweetener.

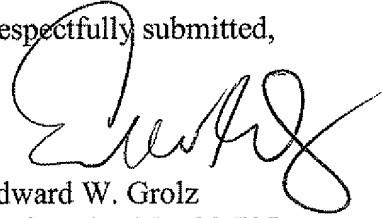
As specifically pointed out in the application, the present invention relates to a synergistically enhanced sweetness independently of any intense sweeteners. As set forth in the subject specification on page 4, last paragraph, "[i]t is indeed most surprising that polydextrose is capable of enhancing the sweetness of sucrose, since polydextrose has heretofore been considered to be a good substitute for sugar except for the sweetness of the sugar. On the contrary, the use of polydextrose as a sugar substitute has been considered to render it necessary to add other compounds to compensate for the decreased sweetness provided by the substituting polydextrose." It is noted that support for the amendment to the main claim can not only be found in the specification as indicated, but can also be found in claim 55 (now canceled).

In view of the above, it is respectfully submitted that the method of the present invention as now claimed is both novel and inventive in view of the cited references. Arguments regarding the remaining cited references are reiterated here by reference to applicant's previously filed response. The rejections of the claims based on said cited prior art are requested to be withdrawn.

It is respectfully submitted that all the claims in the application as presently submitted contain patentable subject matter and a Notice of Allowance is earnestly

solicited. The undersigned respectfully requests the Examiner for a telephone conference should the above amendment and remarks not be considered to place the application into condition for allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edward W. Grolz', written over the typed name.

Edward W. Grolz
Registration No. 33,705

SCULLY, SCOTT, MURPHY & PRESSER, P.C.
400 Garden City Plaza-Suite 300
Garden City, New York 11530
(516) 742-4343
EWG:eh